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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

AUBREY JOHN BRYANT,

Defendant and Appellant.

B270193

(Los Angeles County
Super. Ct. No. YA042689)

APPEAL from an order of the Superior Court of Los Angeles County, William C. Ryan, Judge. Affirmed.

Tyrone A. Sandoval, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris and Xavier Beccera, Attorneys General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Stephanie M. Miyoshi and David A. Wildman, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

Defendant, Aubrey John Bryant, was convicted in 2000 of willfully inflicting corporal injury on a cohabitant. (Pen. Code, former § 273.5, subd. (a); Stats. 1996, ch. 1077, § 16, pp. 7306-7308.)¹ Defendant admitted an allegation he had sustained two prior violent felony convictions within the meaning of sections 667, subdivision (d) and 1170.12, subdivision (b) was true. He was sentenced to 25 years to life in state prison. We affirmed the judgment on appeal. (*People v. Bryant* (May 16, 2001, B141951) [nonpub. opn.])

On December 12, 2012, defendant filed a section 1170.126, subdivision (b) resentencing petition. The trial court denied the petition. The trial court found defendant was ineligible for resentencing because, during the commission of the current offense, he intended to cause great bodily injury to the victim. (§§ 667, subd. (e)(2)(C)(iii), 1170.12, subd. (c)(2)(C)(iii), 1170.126, subd. (e)(2).) We affirm the denial order.

II. DISCUSSION

Defendant contends it was error to rest the eligibility determination on an *independent factual finding* based on a *preponderance of the evidence*. Defendant does not challenge the sufficiency of the record to support the trial court's finding *if* the trial court did not so err. Defendant in effect concedes that the trial court's independent factual findings, if proper, supported a

¹ Further statutory references are to the Penal Code.

reasonable inference defendant intended to cause great bodily injury to the victim.

The trial court did not err. The trial court properly considered our opinion on appeal and trial testimony. (*People v. Burnes* (2015) 242 Cal.App.4th 1452, 1458 [“relevant, reliable, admissible portions of the record of conviction”] 1459-1460 [but *not* a probation report]; *People v. Hicks* (2014) 231 Cal.App.4th 275, 285-286 [appellate opinion]; *People v. Brimmer* (2014) 230 Cal.App.4th 782, 800-801 [appellate opinion, trial transcripts]; *People v. Bradford* (2014) 227 Cal.App.4th 1322, 1327, 1338-1339, 1343 [appellate opinion]; *People v. Elder* (2014) 227 Cal.App.4th 1308, 1317 [appellate opinion]; *People v. Blakely* (2014) 225 Cal.App.4th 1042, 1048-1049, 1063 [“relevant, reliable, admissible portions of the record of conviction”]; *People v. Osuna* (2014) 225 Cal.App.4th 1020, 1030 [appellate opinion].)

Further, the trial court properly made an independent factual finding. (*People v. Perez* (2016) 3 Cal.App.5th 812, 821; *People v. Hicks, supra*, 231 Cal.App.4th at p. 285; *People v. Bradford, supra*, 227 Cal.App.4th at pp. 1331-1336; *People v. Blakely, supra*, 225 Cal.App.4th at p. 1063; see *People v. Newman* (2016) 2 Cal.App.5th 718, 720, 723-727; *People v. Frierson* (2016) 1 Cal.App.5th 788, 791-793.) The trial court properly based its factual finding on a preponderance of the evidence. (Evid. Code, § 115; *People v. Osuna, supra*, 225 Cal.App.4th at p. 1040; see *People v. Newman, supra*, 2 Cal.App.5th at pp. 720, 727-732; *People v. Frierson, supra*, 1 Cal.App.5th at pp. 793-794; see also *People v. Blakely, supra*, 225 Cal.App.4th at p. 1059 [“We reject defendant’s claim that an inmate seeking resentencing pursuant to section 1170.126 has a Sixth Amendment right to a jury determination, beyond a reasonable doubt, on the question of

conduct constituting a disqualifying factor”]; but see *People v. Arevalo* (2016) 244 Cal.App.4th 836, 842, 484-852.)

III. DISPOSITION

The order denying defendant’s resentencing petition is affirmed.

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TURNER, P.J.

We concur:

BAKER, J.

KIN, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.